

APPEAL NO. 93469

A contested case hearing was held in (city), Texas on October 20, 1992, (hearing officer) presiding as hearing officer. Appellant (carrier) represented the insurance carrier, listed in the hearing officer's report as Reliance Insurance Co. (but listed in this appeal of attorney fees as Planet Insurance Co.) at the contested case hearing concerning the claim of (claimant). This hearing was appealed by the claimant and a decision was rendered in Texas Workers' Compensation Commission Appeal No. 92679, decided February 3, 1993 (Unpublished). The carrier filed for attorney's fees and an order on attorney's fees was entered by the hearing officer and mailed on May 20, 1993. Carrier requests our review of the award of attorney's fees urging that the hearing officer abused her discretion in significantly reducing the amount it feels were necessary and appropriate fees.

DECISION

Being unable to determine that pertinent and appropriate matters were considered by the hearing officer in entering her decision and order on attorney's fees, particularly in view of the great disparity in the amount claimed and the amount awarded and the information advanced in the appellant's accompanying brief, we reverse and remand.

Pursuant to the provisions of Article 8308-4.091 of the Texas Workers' Compensation Commission, TEX. REV. CIV. STAT. ANN. art 8308-4.091 (Vernon Supp. 1993) (1989 Act), the amount of attorney's fees paid for defending an insurance carrier must be approved by the Commission. In determining the amount of the fees, factors as set out in Article 8308-4.09(c) are specified, which include, *inter alia*, the time and labor required, the novelty and difficulty of the questions involved, customary fees in the locale, and the attorney's experience and ability. The Commission has adopted rules (Tex. W. C. Comm'n 28 TEX. ADMIN. CODE § 152.4) setting forth guidelines for maximum hours for specific services performed and we have held that the guidelines apply to attorney's representing carriers. Texas Worker's Compensation Commission Appeal No. 91014A, decided September 20, 1991. In that decision, on the issue of whether the guidelines apply to carrier attorneys, we stated:

On this issue, we follow our holding in Texas Workers' Compensation Commission Appeal No. 91010, September 4, 1991 (TWCC Appeal No. 91010) wherein we held that the time guidelines set forth in Rule 152.4(d) apply to a defense counsel's claim for services through the provision in Rule 152.3(b) which directs the Commission to consider the guidelines in Rule 152.4 in considering whether a defense counsel's fee is reasonable and necessary. We also held that the time limits set forth in Rule 152.4(d) are the maximum time limits for a defense counsel's claim for the services specified therein, unless the defense counsel requests approval for a number of hours greater than those allowed by Rule 152.(d) and demonstrates to the satisfaction of the Commission that the higher fee was justified by the effort necessary to preserve the client's interest or the complexity of the legal and factual issues involved as provided in Rule 152.4(c).

We observed in Texas Workers' Compensation Commission Appeal No. 91019A,

decided October 3, 1991, that only Rule 152.4(c) addresses the possibility that more hours than the maximum set forth in Rule 152.4(d) can be approved in order to preserve the client's interest and to address the complexity of legal and factual issues. Rule 152.3(b) also provides that the nature and length of the professional relationship to the client is a matter to consider. Where there is no demonstration of a basis for a number of hours in excess of those provided in the time guidelines, we have stated, in an unpublished decision, that there is no basis to conclude that the hearing officer abused her discretion or acted arbitrarily. Texas Workers' Compensation Commission Appeal No. 93450, decided July 20 1993. What is of concern to us in this case is the demonstration of cogent matters contained in the brief of the appellant which were not before the hearing officer, our familiarity with the record of the contested case hearing in this case which indicates it was certainly not a simple, uncomplicated case, and the great disparity between the amount claimed and that awarded which, although certainly not controlling, gives us some pause. While it may have been possible, and certainly the better procedure, for the appellant to have brought these matters to the attention of the hearing officer at the close of the hearing, we can understand that they may not have been prepared to do so at that very time given the complexity of the claimed fee, and the unusual aspects of the investigation and preparation of the case.

The total fee claimed, including attorney, paralegal and investigative time, together with various expenses, was \$15,129.50 and the amount awarded was \$1,671.00, only slightly more than 10%. As indicated, the ratio of award to amount claimed is not controlling. However, under the circumstances of this case and given the significant ancillary matters set forth in the brief (peculiar to the investigation in this matter) that were not before or considered by the hearing officer, we concluded it is appropriate to remand the case so that these matters may be given proper consideration and be further developed as deemed necessary by the hearing officer. We do not mean to imply that all matters set forth in appellant's brief are necessarily meritorious and would indeed observe that a claim for some 14 hours of attorney time in preparing the application for attorney's fees tends to stretch the imagination a bit. The decision and order on attorney's fees is reversed and the case is remanded for further consideration and development of evidence as deemed necessary and appropriate by the hearing officer.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge